Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
800 Data Base Access Tariffs and the 800 Service Management System Tariff	)	CC Docket No. 93-129
	)	
and	)	
	)	
Provision of 800 Services	)	CC Docket No. 86-10

APPLICATION FOR REVIEW

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Of Counsel,
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July 28, 1997

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SUMMARY

In this Application for Review, U S WEST Communications, Inc. ("U S WEST") seeks Federal Communications Commission ("Commission") review of an Order of the Common Carrier Bureau ("Bureau"), acting under delegated authority. In that Order, the Bureau refused to allow U S WEST to reduce its refund liability with respect to its 800 data base access to reflect amounts it has already refunded via the sharing mechanism.

This result is, we argue, fundamentally unfair, in that it requires U S WEST to refund the same revenues twice to the same customers. Every dollar of revenue produced by the rates the Commission subsequently found unlawful in this proceeding produced a dollar of sharing obligation in 1996 and fifty cents of sharing obligation in 1993. If U S WEST had set its rates as the Commission subsequently determined it should have, its revenues would have been reduced, thus reducing its sharing obligation as well. Thus we believe the Commission should allow U S WEST to offset its remaining refund liability to reflect sharing in 1993 and 1996.

Whatever, the outcome for 1993, U S WEST believes the Commission must permit it to take the offset for 1996. The Commission issued its Report and Order resolving the issues raised by the tariff filings nearly 42 months after the rates went into effect, despite explicit statutory direction to complete such proceedings within 15 months. If the Commission had fulfilled this statutory responsibility, U S WEST's rates would have been reduced long before 1996, thus reducing its earnings and its sharing obligation for that year. Thus the Commission's failure to

complete the proceeding in a timely fashion caused U S WEST to refund a greater amount via the sharing mechanism. The Bureau now would require U S WEST to refund that money again.

If sustained, that determination would produce serious prejudice to U S WEST as a result of the Commission's failure to complete the proceeding in the time required by statute. Though such a failure does not divest the Commission of jurisdiction to act, the Commission must take such prejudice into account when it does act. Thus, with respect to 1996, we believe the Commission must allow U S WEST to reduce its remaining refund liability to reflect the amounts it has already refunded through sharing.

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APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the rules of the Federal Communications Commission ("Commission"),[1] U S WEST Communications, Inc. ("U S WEST") hereby submits this Application for Commission review of the Refund Order of the Common Carrier Bureau ("Bureau") addressing the refund plan submitted by U S WEST in this proceeding.[2]

I. BACKGROUND

In 1993, the Commission ordered local exchange carriers ("LEC"), including U S WEST, to file tariffs for the provision of 800 data base access.[3] U S WEST filed its tariff in March, 1993; as directed by the Commission, it treated the costs of

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[1] 47 C.F.R. § 1.115.

[2] In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, Memorandum Opinion and Order, CC Docket. Nos. 93-129 and 86-10, DA 97-1336, rel. June 26, 1997 ("Refund Order").

[3] In the Matter of Provision of Access for 800 Service, Order, 8 FCC Rcd. 1423 (1993).

providing query service as an exogenous cost for purposes of price caps. Thus U S WEST adjusted the relevant price cap indices ("PCI") to reflect its estimate of these costs. On April 28, 1993, the Bureau issued an Order suspending the LECs' tariffs for one day and allowing them then to take effect subject to an accounting order.[4] U S WEST's tariff took effect on May 1, 1993.

On October 28, 1996, the Commission issued its Report and Order in this proceeding.[5] In the Report and Order, the Commission disallowed a significant portion of the exogenous costs claimed by U S WEST and the other LECs.[6] The Commission ordered U S WEST to adjust its PCIs to reflect the disallowed costs, and to reduce its rates to the extent necessary to bring its actual price indices ("API") below the adjusted PCIs.[7] On November 27, 1996, U S WEST filed a revised traffic sensitive PCI and revised tariffs to bring its traffic sensitive API below the revised PCI. Those tariffs took effect on December 21, 1996.

On April 14, 1997, the Commission issued its Order on Reconsideration in this proceeding.[8] There, the Commission ordered U S WEST to make refunds "consistent with the findings of both the Report and Order and [the Order on

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[4] In the Matter of the Bell Operating Companies' Tariff for the 800 Service Management System, Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, Order, 8 FCC Rcd. 3242 (1993).

[5] In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, Report and Order, 11 FCC Rcd. 15227 (1996) ("Report and Order").

[6] Id. at 15250-317 ¶¶ 48-195.

[7] Id. at 15365-66 ¶ 316-17.

Reconsideration]."[9] The Commission ordered U S WEST to file a refund plan within 30 days, and it delegated authority to the Bureau to resolve any issues not already resolved in the Order on Reconsideration.[10]

U S WEST submitted its refund plan on May 14, 1997.[11] Consistent with the Report and Order, U S WEST calculated its refund liability as the amount by which its API exceeded its PCI (revised to reflect the removal of the disallowed costs) in any given period. In some periods, the API remained below the revised PCI, so that U S WEST calculated no refund liability for those periods. In the following periods, however, U S WEST calculated that its API exceeded its revised PCI by the listed amounts, which are prorated to reflect the length of time the rates were in effect:

May 1-June 30, 1993	$418,354
August 1-December 31, 1995	$2,020,055
January 1-June 30, 1996	$2,544,466
July 1-December 20, 1996	$2,829,091

U S WEST further calculated that it had already refunded a substantial portion of its refund liability by means of the price cap sharing mechanism. That is, in 1993, U S WEST was subject to 50% sharing; in 1996, it was subject to 100% sharing. U S WEST thus proposed to reduce its remaining refund liability to $209,177 for

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[8] In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, Order on Reconsideration, CC Docket Nos. 93-129 and 86-10, FCC 97-135, rel. Apr. 14, 1997 ("Reconsideration Order").

[9] Id. ¶ 20.

[10] Id. ¶ 21.

1993, and to zero for 1996.

In the Refund Order, the Bureau affirmed that U S WEST had correctly calculated its refund liability as the amount by which its API exceeded its revised PCI in the relevant periods.[12] The Bureau further ruled, however, that U S WEST could not offset its refund liability to reflect sharing amounts it had already refunded to customers.[13] It ordered U S WEST to effect refunds by means of a one-time exogenous change to its PCI.[14]

In this Application, U S WEST argues that the Bureau erred in not allowing U S WEST to reduce its refund liability to reflect amounts it had previously refunded by means of the sharing mechanism. We will demonstrate that this ruling would effectively require U S WEST to refund these amounts twice, a result at odds with the Report and Order, the Reconsideration Order, and, we believe, with the Communications Act. This result is particularly egregious with respect to 1996, in light of the Commission's failure to resolve this proceeding within the statutorily-mandated period. In reaching its result, the Bureau misapplied existing precedent and disregarded applicable precedent dictating a contrary result. We ask that the Commission reverse the Refund Order and permit U S WEST to offset its refund liability by the amounts it has already refunded under the sharing mechanism.

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[11] Refund Plan of U S WEST Communications, Inc., filed herein May 14, 1997 ("Refund Plan").

[12] Refund Order ¶ 11.

[13] Id. ¶¶ 16-17.

[14] Id. ¶ 26.

II. THE BUREAU ERRED BY DENYING U S WEST A SHARING OFFSET AGAINST ITS REFUND LIABILITY THUS REQUIRING U S WEST TO REFUND THESE AMOUNTS TWICE.

As it existed throughout the relevant period, the Commission's price cap regime required price cap LECs to share all or a portion of their earnings in excess of specified rates of return. Exhibit 1 to this Application is a copy of the final Form 492 filed by U S WEST for 1993; Exhibit 2 is a copy of U S WEST's preliminary Form 492 for 1996. As reflected thereon, U S WEST was in 50% sharing in 1993, and in 100% sharing in 1996.

In its Refund Plan, U S WEST argued that it should be allowed to apply the amount of its sharing in these two years to offset its refund liability, on the theory that the subsequently-disallowed exogenous costs inflated its rates – and thus its earnings – in those years.[15] That is, if U S WEST's PCI had not included the subsequently-disallowed costs, its rates and earnings would have been lower, concomitantly reducing its sharing obligation. The Bureau agreed that the inclusion of these costs had the effect U S WEST claimed.[16]

Exhibit 3 sets forth the relevant data as shown on U S WEST's Form 492 for 1993, and then restated to reflect the removal of the revenue attributable to the spread between U S WEST's API and its restated PCI. Exhibit 4 shows the same

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[15] Refund Plan at 2-6.

[16] "Here, the LECs overearned because of unlawful exogenous cost adjustments that were subsequently disallowed. This overearning, resulting from overcharges to customers, led to an increased sharing liability on the part of these incumbent LECs . . ." Refund Order ¶ 17 (footnote omitted).

information for 1996. These exhibits demonstrate that every dollar of those revenues produced fifty cents of sharing obligation in 1993, and a full dollar of sharing obligation in 1996.

Notwithstanding the Bureau's agreement that U S WEST had already returned, via the sharing mechanism, a portion of the amounts it collected because of its overstated PCI, the Bureau rejected U S WEST's proposed offset, stating:

> We believe that such a result is contrary to the principles underlying *FPC v. Tennessee Gas Co.*, where the party filing the rate "shoulder[ed] the hazards incident to its actions." Further, a balancing of LECs' and customers' interests does not persuade us that we should not apply the policy of *FPC v. Tennessee Gas Co.*, as the LECs have not shown that there are significant factors that would weigh against full refunds attributable to unlawful overcharges. We therefore find that the policy of *FPC v. Tennessee Gas Co.* is applicable here and that the LECs should not be entitled to an offset due to tariff provisions that were found by the Commission to be unlawful.[17]

In making this determination, the Bureau misapplied the precedent it cited. Its decision is inconsistent with the Report and Order, the Order on Reconsideration and, we believe, the purposes of the Communications Act.

FPC v. Tennessee Gas Co.,[18] involved a rate increase by a natural gas company, which set its rates to earn an overall return of 7%; following a five-month suspension, those rates went into effect, subject to refund. The Federal Power Commission ("FPC") determined that the company was entitled to a return no higher than 6 1/8%; accordingly, the FPC ordered the company to reduce its rates and to refund the excessive amounts it had collected while the higher rates were in

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[17] Id. (footnotes omitted).

[18] Federal Power Com'n v. Tenn. Gas Transmission Co., 371 U.S. 145 (1962).

effect. It deferred, however, consideration of the allocation of the company's overall costs among its six rate zones. The company argued that it should not be obliged to make refunds until the FPC resolved the latter issue because that resolution could produce further rate decreases for some customers, with rate increases for others. As a result, the company could be required to make further refunds, but have no opportunity to collect the offsetting increase, and thus, while the case was under consideration, it might not earn the return the FPC had authorized. The Supreme Court held that the FPC acted within its authority in bifurcating the proceeding in this fashion, and that the company had no remedy if that resulted in its earning less than the authorized return for the period the rates were under investigation:

> [A] natural gas company initiating an increase in rates under § 4(d) [of the Natural Gas Act] assumes the hazards involved in that procedure. It bears the burden of establishing its rate schedule as being "just and reasonable." In addition, the company can never recoup the income lost when the five-month suspension power of the Commission is exercised under § 4(e). The company is also required to refund any sums thereafter collected should it not sustain its burden of proving the reasonableness of an increased rate, and it may suffer further loss when the Commission upon a finding of excessiveness makes adjustments in the rate detail of the company's filing. In this latter respect a rate for one class or zone of customers may be found by the Commission to be too low, but the company cannot recoup its losses by making retroactive the higher rate subsequently allowed; on the other hand, when another class or zone of customers is found to be subjected to excessive rates and a lower rate is ordered, the company must make refunds to them. The company's losses in the first instance do not justify its illegal gain in the latter. . . . The company having initially filed the rates and either collected an illegal return or failed to collect a sufficient one must, under the theory of the Act, shoulder the hazards incident to its actions, including not only the refund of any illegal gain but also its losses where its filed rate is found to be inadequate.[19]

[19] Id. at 152-53.

The principle of FPC v. Tennessee Gas Co.. is simply that a utility may not recoup undercharges to one set of customers by overcharging another group of customers.[20] Nowhere does it indicate that a company "shoulders the hazard" of refunding the same amounts twice to the same customers. Yet that is the precise effect of the Bureau's action.

Recall that the Report and Order did not find any specific rate to be unlawful. Rather, the Commission merely ordered the LECs to reduce their PCIs, and, if necessary, to reduce their rates to bring their APIs back to the level of their revised PCIs.[21] Thus the "illegal rates" in this case were simply the overall level of U S WEST's rates, which were paid by all purchasers of interstate access services. Those same purchasers then received the benefit of the PCI reductions resulting from U S WEST's sharing obligation in 1993 and 1996; they would benefit again from the PCI reduction ordered by the Bureau to implement the refunds ordered by the Commission in the Reconsideration Order. Hence, the same body of customers that paid the rates to begin with received the benefit of U S WEST's sharing reductions, and they would benefit a second time if the Refund Order is sustained.

The Refund Order is inconsistent with the Report and Order and the Reconsideration Order. In the Report and Order, the Commission required the LECs to lower their rates only to the extent their APIs exceeded their revised PCIs. It thus determined to consider the lawfulness of the LECs' rates in light of the

[20] In the Order on Reconsideration, the Commission cited FPC v. Tennessee Gas Co. for the proposition that LECs could not offset their refund liability to reflect any headroom they might have had in a given year in a different basket.

practical effects of the price cap regime. The potential existence of headroom is one such practical effect, and the Bureau properly determined that the LECs' refund liability in any given year would reflect that headroom. For the years at issue here, sharing was also a reality of price caps, and in 1993 and 1996 it had the practical effect of requiring U S WEST to refund half (in 1993) or all (in 1996) of the revenues it collected on account of the rates the Commission subsequently found unlawful. A dollar refunded through the sharing mechanism is worth just as much as a dollar refunded under any other process. Indeed, in this case, the impact – a PCI reduction – is identical.

In the Reconsideration Order, the Commission justified ordering refunds in part by stating –

> Through the use of the accounting order, we put the incumbent LECs on notice that refunds might be necessary, and established a mechanism that could readily place customers in a position of having paid no more than lawful rates during the period of investigation.[22]

The Refund Order would result in U S WEST's customers paying less than lawful rates: U S WEST reduced its PCI to reflect the sharing impact of the rates found to be unlawful; under the Refund Order, it must reduce its PCI again on account of those same rates.

Finally, we believe the Refund Order is inconsistent with the purposes of the Communications Act. Section 204 authorizes the Commission to order a carrier to refund, with interest, "such portion of . . . revised charges as by [the Commission's]

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[21] Report and Order, 11 FCC Rcd. at 15365-366 ¶¶ 316-17.

[22] Reconsideration Order ¶ 20.

decision shall be found not justified."[23] The obvious purpose of this provision is to put the parties in the same positions they would have occupied had the carrier charged no more than lawful rates.

The Refund Order would put U S WEST in a worse position – and its customers in a better position – than if U S WEST had charged no more than the rates found lawful by the Commission. It thus runs contrary to the principles of Section 204.

In 1993, U S WEST refunded – by way of the sharing mechanism – half of the revenues it derived from the rates the Commission subsequently found unlawful; in 1996, it refunded all of those revenues. U S WEST should not be required to refund those revenues a second time.

III. THE COMMISSION MUST ALLOW U S WEST TO OFFSET ITS 1996 REFUND LIABILITY TO REFLECT THE AMOUNTS REFUNDED THROUGH THE SHARING MECHANISM.

The tariffs at issue in this proceeding took effect on May 1, 1993. The Commission issued its Report and Order on October 28, 1996. At the time, Section 204(a)(2)(A) stated:

> [T]he Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 12 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes effective, or within 15 months after such date if the hearing raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.[24]

As noted, the Commission issued the Report and Order nearly 42 months after the

[23] 47 U.S.C. § 204(a)(1).

[24] The statute now requires the Commission to issue an order within 5 months.

rates at issue went into effect.

In the Reconsideration Order, the Commission rejected the argument of several LECs that its failure to comply with the statute deprived it of any authority to order refunds, noting the well established proposition that an agency's failure to act within a statutory deadline does not divest it of jurisdiction to act.[25] U S WEST does not claim that the Commission's failure to comply with the statute deprived it of jurisdiction to act on U S WEST's proposed rates.

In ordering refunds, however, the Commission is obliged to consider the prejudice suffered by U S WEST on account of that failure.[26] Baumgardner, supra, is particularly instructive. It involved a claim of housing discrimination to the Department of Housing and Urban Development ("HUD"). HUD failed to forward the complaint to Baumgardner within ten days, as required by statute, and then provided the wrong complaint; he did not receive the correct complaint for six months. The court held that this failure did not justify dismissal of the complaint. Baumgardner had been prejudiced, however, because HUD's failure to give him prompt notice had deprived him of the opportunity to negotiate or conciliate the complaint.[27] The Court stated:

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[25] Reconsideration Order ¶ 15; see, generally, Brock v. Pierce County, 476 U.S. 253 (1986).

[26] Kelly v. Secretary, U.S. Dept. of Housing, 97 F.3d 118, 121 (6th Cir. 1996); Kelly v. Secretary, HUD, 3 F.3d 951 (6th Cir. 1993); Baumgardner v. Secretary, HUD on Behalf of Holley, 960 F.2d 572 (6th Cir. 1992); U.S. v. Alcan Foil Products, 889 F.2d 1513 (6th Cir. 1989); Sierra Pacific Industries v. Lyng, 866 F.2d 1099 (9th Cir. 1989); United States v. The Salvation Army, 1997 U.S. Dist. LEXIS 882 (S.D.N.Y. 1997); U.S. v. Aspen Square Management Co., Inc., 817 F.Supp. 707 (N.D. Ill. 1993).

[27] Baumgardner v. HUD, 960 F.2d at 578.

> [A]lthough we have sustained a liability determination, we must examine the damages issue carefully being mindful that a prompt chance to conciliate or to be alerted to the charge . . . may well have brought about a resolution of the controversy. We conclude that HUD's delay and handling did have an adverse impact on the question of damages.[28]

Specifically, the Court reduced the civil penalty assessed against Baumgardner because of HUD's procedural failures.[29]

An agency's failure to meet a statutory deadline can affect the damages to be paid to a private party, as demonstrated by Kelly v. Secretary, HUD.[30] There, the Court reduced the economic damages awarded to the victim of housing discrimination because HUD had taken 25 months to resolve the complaint; the statute required resolution in 12 months. The Court determined that damages, including damages for emotional distress, could accrue only for the twelve-month period, rather than for the full 25 months the action was pending. If HUD had met the statutory deadline, the claimant would have ceased to suffer damages after 12 months:

> We cannot ask the Kellys to pay for emotional distress caused by HUD.[31]

The situation presented here is essentially identical: if the Commission had complied with the statutory deadline, it would have issued a decision not later than August 1, 1994 (15 months after the effective date of the tariffs). During 1996 –

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[28] Id. at 580.

[29] Id. at 583.

[30] Kelly v. Secretary, HUD, 97 F.3d 118.

[31] Id. at 121.

when U S WEST was in 100% sharing – U S WEST's PCI and its rates would have been lower than they actually were, thus reducing its sharing obligation by the amount of the reduction (Exhibit 4). But because the Commission did not meet its statutory obligation, U S WEST's 1996 rates remained at an inflated level, thus increasing its sharing obligation. The Refund Order now requires U S WEST to refund the same revenues essentially to the same customers. Thus, not only has U S WEST been prejudiced by the Commission's failure to follow the statutory requirements, if U S WEST is denied an offset for 1996 sharing, the "victims" will receive double compensation. This proceeding therefore presents a stronger case for an adjustment than even Kelly.

Whatever, it may do generally with respect to a sharing offset, we believe the Commission must allow U S WEST to take such an offset with respect to 1996.

IV. CONCLUSION

For the reasons stated, the Commission should allow U S WEST to reduce its refund liability to reflect the amount it has refunded by means of the sharing

mechanism in 1993 and 1996. In the alternative, the Commission must allow U S WEST to reduce its refund liability to reflect the amount of its 1996 sharing.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: Richard A. Karre

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Its Attorney

Of Counsel,
Dan L. Poole

July 28, 1997

EXHIBIT 1

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

See reverse side for information regarding public burden estimate.

Approved By OM
3060-0355
Expires 04/30/

1. Name and Address of Reporting Company
U S WEST Communications Including Malheur and El Paso
1801 California St.
Denver, CO 80202

2. Reporting Calendar Year
(A) From : January 1993 to December 1993

(B) First Report Filed: April 1994

(C) Final Report Filed: April 1995

FCC 492A

PRICE CAP REGULATION
RATE OF RETURN MONITORING REPORT
(Read Instructions on the Reverse Before Completing)
Dollar Amounts Shown in Thousands

3. Items	Total Interstate Services Subject to Price Cap Regulation First Report Col A	Final Report Col B	Difference Col C= (B - A)
1. Total Revenues	2,198,180	2,198,039	(141)
2. Total Expenses and Taxes	1,712,647	1,712,592	(55)
3. Operating Income (Net Return) (Ln1-Ln2)	485,533	485,447	(86)
4. Rate Base (Avg. Net Invest.)	3,564,171	3,564,171	(0)
5. Rate of Return (Ln3/Ln4)	13.62%	13.62%	-0.00%
6. Sharing/Low End Adjustment Amount	(12,231)	(11,945)	286
7. FCC Ordered Refund - Amortized for Current Period	0	0	0

REMARKS

4. CERTIFICATION: I certify that I am the chief financial officer or the duly assigned accounting officer; that I have examined the foregoing report; that to the best of my knowledge and belief, all statements of fact contained in this report are true and this report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth therein during the specified period.

Date	Typed Name of Person Signing	Title of Person Signing	Signature
28-March-95	R. C. Hawk	President-Carrier Division	

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THIS REPORT FORM CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER THE PROVISIONS OF THE U.S. CODE, TITLE 18, SECTION 1001.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

See reverse side for information regarding public burden estimate.

Approved By OMB
3060-0355
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1. Name and Address of Reporting Company
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FCC 492A

PRICE CAP REGULATION
RATE OF RETURN MONITORING REPORT
(Read Instructions on the Reverse Before Completing)
Dollar Amounts Shown in Thousands

REMARKS:

(1) Pursuant to Docket 86-127 Memorandum Opinion and Order released on August 28, 1987, Paragraph 10, the out-of-period revenues identified as "Pre 1993" booked in 1993 not included in prior 492 reports amount to $.1M and are not included in this 492A Report.

(2) In order to remove exclude services from price cap regulation in accordance with the price cap plan, data in this report has been adjusted for the removal of excluded service offerings amounting to $23.0M. Earnings associated with these services have been removed based on the assumption that these excluded services earned the same rate of return as total interstate services.

(3) The following displays the calculation of the 1993 sharing amount from the 492A Report:

	DESCRIPTION:	SOURCE:	(000)
1.	Net Revenues	FCC492A Ln. 1 (A)	2,198,039
2.	Total Expense/Tax	FCC492A Ln. 2 (A)	1,712,592
3.	Operating Income	FCC492A Ln. 3 (A)	485,447
4.	Rate Base	FCC492A Ln. 4 (A)	3,564,171
5.	Rate of Return	Ln. 3/Ln. 4	13.62%
6.	50% Shared Earnings	Ln. 3 - (Ln. 4 * 13.25% * 50%	6,597
7.	Federal Income Tax Gross-up Amount	Ln. 6 * FIT gross-up factor (.538462)	3,552
8.	State/Local Income Tax Gross-up Amount	Ln. 6 & 7 adj. by composite SLIT tax factor	611
9.	Interest on 50% Sharing - Jan.1 - Dec. 31, 1993	(Lines 6+7+8) * 11.25%	1,211
10.	Price Cap Sharing	Lines 6+7+8+9	11,971
11.	Interest on Revision - Jan. 1 - Dec. 31, 1994	Lines 7+8+9 *11.25%	(26)
12.	True-up Price Cap Sharing Adjustment	Lines 10+11	11,945

EXHIBIT 2

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

See reverse side for information regarding public burden estimate.

Approved By OMB
3060-0355
Expires 05/31/98

1. Name and Address of Reporting Company
U S WEST Communications Including Malheur and El Paso
1801 California St.
Denver, CO 80202

2. Reporting Calendar Year
(A) From : January 1996 to December 1996

(B) First Report Filed: April 1, 1997

(C) Final Report Filed:

FCC 492A

PRICE CAP REGULATION
RATE OF RETURN MONITORING REPORT
(Read Instructions on the Reverse Before Completing)
Dollar Amounts Shown in Thousands

3. Items	Total Interstate Services Subject to Price Cap Regulation First Report Col A	 Final Report Col B	 Difference Col C= (B - A)
1. Total Revenues	2,566,828	0	0
2. Total Expenses and Taxes	2,033,978	0	0
3. Operating Income (Net Return) (Ln1-Ln2)	532,850	0	0
4. Rate Base (Avg. Net Invest.)	3,927,755	0	0
5. Rate of Return (Ln3/Ln4)	13.57%	0.00%	0.00%
6. Sharing/Low End Adjustment Amount	(58,209)	0	0
7. FCC Ordered Refund - Amortized for Current Period	0	0	0

REMARKS

4. CERTIFICATION: I certify that I am the chief financial officer or the duly assigned accounting officer; that I have examined the foregoing report; that to the best of my knowledge and belief, all statements of fact contained in this report are true and this report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth therein during the specified period.

Date	Typed Name of Person Signing	Title of Person Signing	Signature
24-March-97	Allan R. Spies	Vice President - Finance	

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THIS REPORT FORM CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER THE PROVISIONS OF THE U.S. CODE, TITLE 18, SECTION 1001.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Approved By OMB
3060-0355
Expires 05/31/98

1. Name and Address of Reporting Company
U S WEST Communications Including Malheur and El Paso
1801 California St.
Denver, CO 80202

2. Reporting Calendar Year
(A) From : January 1996 to December 1996

(B) First Report Filed: April 1, 1997

(C) Final Report Filed:

FCC 492A

PRICE CAP REGULATION
RATE OF RETURN MONITORING REPORT
(Read Instructions on the Reverse Before Completing)
Dollar Amounts Shown in Thousands

REMARKS:

Footnote:
(1) Pursuant to Docket 86-127 Memorandum Opinion and Order released on August 28, 1987, Paragraph 10, the out-of-period revenues identified as "Pre 1996" booked in 1996 not included in prior 492A reports amount to $ 2.7 million and are not included in this 492A report.

(2) Data shown in Column A reflects the removal of $86.9 million in revenues and associated costs for excluded services not subject to Price Cap incentive regulation in accordance with the Commission's Price Cap Plan and its TRP Order, dated February 17, 1995.

(3) Rate Base includes the impact of FCC Docket 96-22 realeased on March 7, 1996. This docket rescinded the rate base treatment provision of RA020 resulted in a increase in the rate base of $21.1 million dollars.

	DESCRIPTION:	SOURCE:	(000)
1.	Net Revenues	FCC492A Ln. 1 (A)	2,566,828
2.	Total Expense/Tax	FCC492A Ln. 2 (A)	2,033,978
3.	Operating Income	FCC492A Ln. 3 (A)	532,850
4.	Rate Base	FCC492A Ln. 4 (A)	3,927,755
5.	Rate of Return	Ln. 3/Ln. 4	13.5663%
6.	50% Shared Earnings	If ROR < 12.25% = 0, If ROR > 12.25% & < 13.25% then [(ROR - 12.25%)/2] * RB	19,639
7.	100% Shared Earnings	If ROR > 13.25% = (13.25-12.25)/2 * RB (ROR - 13.25%) * Rate Base	12,423
8.	Total Shared Earnings	Ln. 6 + Ln. 7	32,062
9.	Federal Income Tax Gross-up Amount	Ln. 8 * FIT gross-up factor (0.538462)	17,264
10.	State/Local Income Tax Gross-up Amount	Ln. 9 adj. by composite SLIT tax factor (0.060738)	2,996
11.	Interest	(Lines 8 + 9 + 10) *11.25%	5,886
12.	Price Cap Sharing	Lines 8 + 9 + 10 + 11	58,209

1996 Sharing - Bell Atlantic Method

	('000)		
Original 1996 Excluded Rev	**86,921**	Exlc	
	before adj.	Adj.	after adj.
1 Rev.	2,653,749	86,921	2,566,828
2 Exp. & Taxes	2,102,850	68,872	2,033,978
3 Net Income	550,899	18,049	532,850
4 RB	4,060,761	133,006	3,927,755
5 ROR	**13.57%**	**13.57%**	**13.57%**
Sharing 50%	20,304	-	19,639
Sharing 100%	12,994	-	12,423
Total sharing	33,298	-	32,062
FIT gross up	17,930	-	17,264
SIT gross up	3,101	-	2,996
Interest	6,112	-	5,886
6 ***Price Cap Sharing***	**(60,441)**	-	**(58,209)**
Shring without interest	54,329	-	52,323

Rev. as % of RB	153.02%	4,060,761/2,653,749
Excluded RB	133,006	153.02% X 86,921
Excluded Net Income	18,049	133,006 X 13.57%
Exclude Exp. & Tax	68,872	86,921 - 18,049